

Message Text

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PAGE 01 USUN N 01496 01 OF 03 182357Z
ACTION IO-14

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E.O. 11652: N/A
TAGS: EGEN, ECOSOC, EINV
SUBJECT: MARCH 30 SESSION OF UN WORKING GROUP ON CODE
OF CONDUCT FOR TRANSNATIONAL CORPORATIONS (TNC'S)

REF: A) USUN 1100, B) USUN 1116, C) USUN 1117,
- D) USUN 1150, E) USUN 1154, F) USUN 1176

1. SUMMARY: G-77 DISPLAYED HIGHLY RELUCTANT AND
LARGELY NEGATIVE ATTITUDE DURING MARCH 30-31 DISCUSSION
OF SECTION IV (RESPONSIBILITIES OF GOVTS). WITH HEAVY
SUPPORT FROM EAST BLOC COUNTRIES, G-77 MADE STRONG
CONCERTED BUT UNSUCCESSFUL EFFORT TO ELIMINATE MAIN
SECTIONS OR TO SUBORDINATE THEM TO LOCAL LAWS, THUS
CALLING INTO QUESTION BASIC SUBSTANCE OF SECTION IV.
DEVELOPED COUNTRIES, ESPECIALLY US AND UK (WITH DIS-
APPOINTINGLY LOW PARTICIPATION BY MOST OTHERS), IN-
SISTED ON PRESERVING ANNOTATIONS IN SECTION IV AS WELL
AS LINKAGE WITH SECTION III ISSUES, AND BY AND LARGE
RECEIVED SUPPORT OF CHAIRMAN (NIKLASSON, SWEDEN).

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PAGE 02 USUN N 01496 01 OF 03 182357Z

SESSION SHOWED DEEPLY DIVERGENT VIEWS BETWEEN LDCS
AND DEVELOPED COUNTRIES AND, TO A CERTAIN EXTENT,
AMONG LDCS THEMSELVES.

2. IN OTHER DEVELOPMENT, OECD INFORMAL CONTACT GROUP
AGREED TO MEET APRIL 14 IN PARIS TO PREPARE FOR US
TRANSNATIONAL COMMISSION MEETING. END SUMMARY

3. INTERGOVERNMENTAL COOPERATION (PARAS 150 AND 151):
NEGATIVE TONE OF ENTIRE SESSION WAS SET BY JAMAICAN
WHO, SPEAKING FOR G-77, OPENED DISCUSSION BY EMBRACING
SOVIET THEMES ON CHAPTER EXPRESSED IN YESTERDAY'S
MEETING (REF F). HE REJECTED NOTION THAT GOVTS
SHOULD ACCEPT CERTAIN SPECIAL OBLIGATIONS IN
DEALING IWTH TNCS AND STRESSED IMPORTANCE OF INTER-
GOVERNMENTAL COOPERATION TO ACHIEVE PRIMARY CODE AIM,
NAMELY TO CONTROL TNCS AND MINIMIZE ADVERSE EFFECTS
OF THEIR ACTIVITIES ON HOST ECONOMIES. HE SUGGESTED
CODE CONTAIN SEPARATE SECTION ON INTERGOVERNMENTAL
COOPERATION; US AND UK STATED DISCUSSION OF SUCH A
RESTRUCTURING PREMATURE, AND FRG DEL THOUGHT SUBJECT
MIGHT FIGURE IN PREAMBLE. USSR AND GDR WERE FIRM THAT,
WHATEVER FINAL LEGAL NATURE OF CODE, THERE WAS NO
ROOM IN CODE TO RECOMMEND HOST GOVTS DUTIES TOWARD
TNCS. GDR TOOK EXCEPTION TO "SHOULD" IN CHAPTER IV
TEXT AS DIFFERENT ISSUE FROM CHAPTER III DRAFTING, AND
SUGGESTED PARA 150 STATE THAT "COOPERATION IS AN
IMPORTANT ELEMENT" FOR ENCOURAGING TNC CONTRIBUTIONS.
US, WITH UK AND CANADIAN SUPPORT, EMPHASIZED THAT PART
IV WAS AN ESSENTIAL AND FUNDAMENTAL PART OF THE CODE,
AND THAT FAILURE TO TAKE ACCOUNT ADEQUATELY OF ESSENTIAL
POINTS IN SECTION IV WOULD HAVE A SERIOUS
EFFECT ON OUR ATTITUDES ON POINTS DISCUSSED UNDER SECTION
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PAGE 03 USUN N 01496 01 OF 03 182357Z

III. US AND UK DELS ALSO RESERVED ON PARA 151, STATING
RETENTION OF PARA WOULD NOT PREJUDICE VIEWS ON FOLLOW-UP
MATTERS.

4. EQUITABLE AND FAIR TREATMENT (155): INDIA, FOR
G-77, AND USSR PROPOSED ELIMINATION OF LANGUAGE REFERRING
TO GOVERNMENT TREATMENT OF TNCS "IN A FAIR AND EQUITABLE
MANNER WHICH MEETS THE INTERESTS OF ALL CONCERNED,"
AND "AS WELL AS INTERNATIONAL NORMS." INDIAN EXPLAINED
THAT AS LONG AS TNCS PURSUE OPERATIONS COMPARABLE
TO THOSE OF DOMESTIC FIRMS, THEY WILL RECEIVE SAME TREAT-
MENT UNDER LOCAL LAW. AS FOR ACTIVITIES GOING BEYOND
THOSE OF DOMESTIC ENTERPRISES, HOST GOVTS HAVE EXCLUSIVE
RIGHT TO IMPOSE REGULATIONS. BOTH G-77 AND EAST BLOC
SUGGESTED THAT ENTIRE ANNOTATION COULD BE DELETED.
OECD DELS LENT SUPPORT TO THRUST OF SECRETARIAT TEXT
AND RETENTION OF REFERENCE TO INTERNATIONAL LAW. USSR
INTERESTINGLY AGREED TO TERM "INTERNATIONAL NORM," BUT
NOT "INTERNATIONAL LAW." IN VIEW OF GROUP'S DISAGREEMENT,
CHAIRMAN RECOMMENDED PRESENT WORDING BE RETAINED FOR
TIME BEING AND SECRETARIAT FIND SOME LANGUAGE TO COVER
CONCERNS OF BOTH SIDES. NIKLASSON ALSO GAVE SUPPORT

TO INTERNATIONAL CONFERENCE.

5. NATIONAL TREATMENT OF ESTABLISHED TNCS (156):
INDIA URGED DELETION OF CLAUSE "NO LESS AND NO MORE
FAVORABLE THAN THAT ACCORDED DOMESTIC ENTERPRISES,"
ARGUING PRESENT LANGUAGE MIGHT IMPLY MORE FAVORABLE
TREATMENT OF TNCS. HE PROPOSED USE OF TERM "SAME TREAT-
MENT" INSTEAD, WHICH GROUP ACCEPTED. OECD COUNTRIES
MADE IT CLEAR THAT PRINCIPLE OF NON-DISCRIMINATION BE-
TWEEN FOREIGN AND DOMESTIC COMPANIES MUST BE MAINTAINED,

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PAGE 01 USUN N 01496 02 OF 03 182359Z

ACTION IO-14

INFO OCT-01 ISO-00 AID-05 CEA-01 CIAE-00 COME-00 EB-08
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AND NOTED CONNECTION WITH
PRINCIPLE OF INTERNATIONAL LAW MENTIONED IN PREVIOUS
PARAGRAPH.

6. TREATMENT BY HOME COUNTRIES (157): ANNOTATION IN
VIEW OF U.S., FRENCH, AND CANADIANS, ANNOTATION RAISED
SECTION IV (C) JURISDICTIONAL ISSUES, IN PARTICULAR
EXTRATERRITORILY, AND SHOULD BE DEALT WITH THERE.
SWEDEN TOOK LEAD IN ARGUING PRINCIPLE SHOULD PROVIDE
FOR MUTUALITY RATHER THAN FOCUSING ON HOME GOVERNMENTS
WHICH INDIAN INDICATED WAS NEGOTIABLE. CHAIRMAN
SUGGESTED THAT MOVE TO SECTION IV(C) BE CONSIDERED.

7. REGULATION OF TNCS BY STATES (158): CANADA AND UK
OBSERVED PARA MAY USEFULLY BE MOVED AHEAD OF PRESENT
PARA 155 TO PRESERVE SEQUENCE OF TREATMENT OF ISSUE IN

CIEC AND ELSEWHERE, I.E., FIRST A STATEMENT ON SOVEREIGNTY REGARDING TERMS OF ENTRY AND THEN A STATEMENT ON NATIONAL TREATMENT. SWEDEN SUGGESTED REFERENCE TO FOREIGN "DIRECT" INVESTMENT, CONSISTENT WITH TNC FOCUS LIMITED OFFICIAL USE

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PAGE 02 USUN N 01496 02 OF 03 182359Z

OF CODE, OR DELETION OF REFERENCE TO "FOREIGN INVESTMENT" ALTOGHER, WHICH NIKLASSON SEEMED TO FAVOR.

8. CLARITY AND PREDICTABILITY OF NATIONAL LAWS AND POSSIBLE CHANGES (167 AND 168): INDIA COMPLAINED CODE WAS PUTTING TOO MANY OBLIGATIONS ON HOST GOVERNMENTS, ESPECIALLY LDOS, IN TERMS OF DEMANDS FOR CLARITY OF POLICIES, ETC., AND THAT IT WAS USELESS TO INCLUDE SUCH CONDITIONS IN CODE BECAUSE OF GOVERNMENT INABILITY IN MANY INSTANCES TO CLEARLY DEFINE NATIONAL POLICIES. HE WARNED TNCs SHOULD BE EXPECTED TO ADHERE TO REGULATIONS AS THEY EXISTED AND NOT USE ALLEGED VAGUENESS OF FORMULATIONS AS EXCUSE FOR NOT OBSERVING THEM. OECD DELEGATIONS AGREED THAT PREDICTABILITY OF INVESTMENT CONDITIONS WAS A DIFFICULT CONCEPT BUT THAT IT NEVERTHELESS CONSTITUTED ESSENTIAL PART OF FAVORABLE INVESTMENT CONDITIONS IN ANY GIVEN COUNTRY. FRG RECALLED CIEC TEXT ON THIS POINT, AND INDIAN PARTICIPATION AT CONFERENCE. GDR AND USSR SAID THAT CONCEPT MUST NOT BE USED TO LIMIT SOVEREIGN RIGHTS OF STATES, AND SUGGESTED REFORMULATION OF PARAS TO THE EFFECT THAT THESE MATTERS SHOULD BE DETERMINED BY GOVERNMENTS. AT THAT POINT INDIGNANT CHAIRMAN POINTED OUT THAT THESE POINTS HAD BEEN ACCEPTED IN PREVIOUS DISCUSSIONS AND THAT GROUP WAS LOSING GROUND IN PRESENT INTERVENTIONS, WHICH WERE NOT CONDUCIVE TO AGREEMENT ON CODE. INDIAN RESPONDED THAT SUCH FORMULAS WERE TIME FOR A DOCUMENT LIKE CIEC, BUT NOT FOR A "CODE". U.S. NOTED THIS RAISED SECTION III DEFINITIONAL ISSUES, AND NIKLASSON AGREED, DEFINING FURTHER DISCUSSION. HE STRESSED ULTIMATE TEXT SHOULD NOT PREJUDICE SOVEREIGNTY OF GOVERNMENTS TO REGULATE TNC'S. REFERENCE TO "RIGHTS" OF TNC'S UNHELPFULLY QUESTIONED BY INDIAN, BUT OTHER OECD DELS WEIGHED IN LIMITED OFFICIAL USE

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PAGE 03 USUN N 01496 02 OF 03 182359Z

FOR ITS RETENTION.

9. GOVERNMENT USE OF TNCs FOR FOREIGN POLICY OBJECTIVES (174), DIPLOMATIC REPRESENTATION (175): IT WAS ARGUED THAT, TO EXTENT POSSIBLE, IDENTICAL LANGUAGE BE USED IN

SECTIONS III(A) AND IV TO COVER RELATED CONCEPTS. U.S. DEL RECALLED ISSUES RAISED IN DISCUSSIONS OF PARAS 47 AND 53, AND SUGGESTED THESE ISSUES ALL BE COVERED AS JURISDICTIONAL AND DISPUTE SETTLEMENT MATTERS IN IV(C). ITALY SUGGESTED THAT PARA 174 NOT MERELY REFER TO POLITICAL PRESSURES WHICH MAY BE EXERTED ON TNCS BY HOME GOVERNMENT, BUT TO THAT WHICH MIGHT BE EXERTED BY HOST GOVERNMENTS AS WELL. SWEDEN MENTIONED SITUATION WHERE FOREIGN AFFILIATE MAINTAINS LARGER OPERATIONS ABROAD THAN IN HOME COUNTRY, AND WHERE HOST GOVERNMENT MAY THEN BE IN POSITION TO EXERT CONSIDERABLE PRESSURE ON HOME GOVERNMENT, E.G., IN STRUCTURING COMPANY'S R&D ACTIVITIES. INDIA, SPEAKING FOR G-77, ALSO CITED NEED TO LINK SECTIONS III (A) AND IV PROVISIONS, AND REQUESTED THAT SINCE PARA 54 SPECIFIES TNCS SHOULD ONLY REQUEST HOME GOVERNMENTS FOR "SUPPORT" AFTER ALL LEGAL REMEDIES IN HOST COUNTRIES HAVE BEEN EXHAUSTED (SIC), ANALOGOUS PROVISION AIMED AT HOME GOVERNMENTS SHOULD BE INCORPORATED IN PARA 175. U.S. AND FRENCH DEL NOTED PARA 175 SHOULD NOT USE TERM "SUBMISSION" OF CLAIMS, WITH U.S. SUGGESTIONS, SUBSTITUTION WITH "ASSERTION". AS FOR PARA 174, INDIAN SUGGESTED THAT IT READ "HOME GOVERNMENTS" SHOULD NOT USE TNCS AS INSTRUMENTS FOR ATTAINMENT OF FOREIGN POLICY OBJECTIVES." CHAIRMAN ACCEPTED FRENCH SUGGESTION THAT TERM "INTERNATIONAL LAW" BE SUBSTITUTED FOR REFERENCE TO "INTERNATIONAL NORMS". US DEL THEN NOTED ADDITIONAL SECTION IV ISSUES NOT DEALT WITH IN WORKING PAPER, E.G., RESPECT FOR CONTRACTS AND RENEGOTIATION; TRANSFER OF INCOME AND CAPITAL; AND RECOGNITION OF THE RIGHTS CONSISTENT WITH LOCAL LAW TO LOBBY GOVERNMENT AND REPRESENTS ITS POLITICAL PROCESS. LIMITED OFFICIAL USE

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PAGE 04 USUN N 01496 02 OF 03 182359Z

SWITZERLAND AND FRG SECONDED U.S. ON TRANSFLEXIBILITY

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PAGE 01 USUN N 01496 03 OF 03 190000Z

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POINT. CHAIRMAN DEFERRED DISCUSSION OF THIS ISSUE
UNTIL RELEVANT ASPECTS HAVE BEEN DISCUSSED UNDER III(B).
HE ALSO NOTED US REQUEST FOR LANGUAGE ON CONTRACTS WAS A
LEGITIMATE ISSUE TO CONSIDER FOR CHAPTER IV WHEN
LANGUAGE ON THIS SUBJECT AGREED FOR CHAPTER III. LOBBY-
ING POINT WAS COVERED BY III A ISSUES.

10. ON SEPARATE SUBJECT, OECD INFORMAL CONTACT GROUP
HELD MEETING MARCH 30 AND DECIDED TO HOLD FURTHER SESSION
FRIDAY, APRIL 14, IN PARIS, FOLLOWING CONCLUSION OF
OECD INVESTMENT COMMITTEE (CIME) SESSION, TO CONSIDER
ISSUES TO BE COVERED IN MAY 15-26 ANNUAL CONFERENCE OF UN
COMMISSION ON TNCS. YOUNG

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